

CHARITY REGISTRATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: James A. Dunnigan

LONG TITLE**General Description:**

This bill amends provisions related to charitable solicitations.

Highlighted Provisions:

This bill:

- ▶ amends the definition of a professional fund raiser;
- ▶ amends the definition of a professional fund raising counsel or consultant;
- ▶ amends the criteria for registration as a professional fund raiser or a professional fund raising counsel or consultant;
- ▶ exempts certain acts from registration under Title 13, Chapter 22, Charitable Solicitations Act;
- ▶ amends regulations on a solicitation for the relief of a named individual; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

13-22-2, as last amended by Laws of Utah 2017, Chapter 98

13-22-5, as last amended by Laws of Utah 2005, Chapter 18



13-22-8, as last amended by Laws of Utah 2017, Chapter 98

13-22-9, as last amended by Laws of Utah 2013, Chapter 124

13-22-21, as last amended by Laws of Utah 2017, Chapter 98

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 13-22-2 is amended to read:

13-22-2. Definitions.

As used in this chapter:

(1) "Chapter" means a chapter, branch, area, office, or similar affiliate of a charitable organization.

(2) (a) "Charitable organization" or "organization" means any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

(i) who is or holds itself out to be:

(A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;

(B) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or

(C) established for any charitable purpose;

(ii) who solicits or obtains contributions solicited from the public for a charitable purpose; or

(iii) in any manner employs a charitable appeal as the basis of any solicitation or employs an appeal that reasonably suggests or implies that there is a charitable purpose to any solicitation.

(b) "Charitable organization" includes a chapter or a person who solicits contributions within the state for a charitable organization.

(3) "Charitable purpose" means any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective or for the benefit of a public safety, law enforcement, or firefighter fraternal association.

(4) "Charitable sales promotion" means an advertising or sales campaign, conducted by

a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or purpose.

(5) (a) "Charitable solicitation" or "solicitation" means any request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose.

(b) "Charitable solicitation" or "solicitation" includes:

(i) any of the following done, or purporting to be done, for a charitable purpose:

~~[(i)]~~ (A) any oral or written request, including any request by telephone, radio, television, or other advertising or communications media;

~~[(ii)]~~ (B) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or

~~[(iii)]~~ (C) an application or other request for a grant; or

~~[(iv)]~~ (ii) the sale of, offer or attempt to sell, or request of donations in exchange for any advertisement, membership, subscription, or other article in connection with which any appeal is made for any charitable purpose, or the use of the name of any charitable organization or movement as an inducement or reason for making any purchase donation, or, in connection with any sale or donation, stating or implying that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose.

(6) "Commercial co-venturer" means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for a charitable organization or purpose.

(7) (a) "Contribution" means the pledge or grant for a charitable purpose of any money or property of any kind, including any of the following:

(i) a gift, subscription, loan, advance, or deposit of money or anything of value;

(ii) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for charitable purposes; or

(iii) fees, dues, or assessments paid by members, when membership is conferred solely as consideration for making a contribution.

(b) "Contribution" does not include:

(i) money loaned to a charitable organization by a financial institution in the ordinary

course of business; or

(ii) fees, dues, or assessments paid by members when membership is not conferred solely as consideration for making a contribution.

(8) "Contributor" means a donor, pledgor, purchaser, or other person who makes a contribution.

(9) "Director" means the director of the Division of Consumer Protection.

(10) "Division" means the Division of Consumer Protection of the Department of Commerce.

(11) "Material fact" means information that a person of ordinary intelligence and prudence would consider relevant in deciding whether or not to make a contribution in response to a charitable solicitation.

(12) (a) "Professional fund raiser" means a person who:

(i) for compensation or any other consideration, ~~[solicits contributions for charitable purposes, or plans or manages]~~ for or on behalf of a charitable organization or any other person:

(A) solicits contributions; or

(B) promotes or sponsors the solicitation of contributions [for or on behalf of any charitable organization or any other person];

(ii) (A) for compensation or any other consideration, plans, manages, counsels, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization or any other person; and

(B) at any time has custody of a contribution for the charitable organization;

~~[(ii)]~~ (iii) engages in, or represents being independently engaged in, the business of soliciting contributions for a charitable organization;

~~[(iii)]~~ (iv) manages, supervises, or trains any solicitor whether as an employee or otherwise; or

~~[(iv)]~~ (v) uses a vending device or vending device decal for financial or other consideration that implies a solicitation of contributions or donations for any charitable organization or charitable purposes.

(b) "Professional fund raiser" does not include:

(i) a bona fide officer, director, volunteer, or full-time employee of a charitable

organization[-];

(ii) an attorney, investment counselor, or banker who, in the conduct of that person's profession, advises a client regarding legal, investment, or financial advice; or

(iii) a person who tangentially prepares materials, including a person who:

(A) makes copies;

(B) cuts or folds flyers; or

(C) creates a graphic design or other artwork without providing strategic or campaign-related input.

(13) (a) "Professional fund raising counsel or consultant" [~~or other comparable designation or title~~] means a person who:

(i) for compensation or any other consideration, plans, manages, [~~advises,~~] counsels, consults, or prepares material for, or with respect to, the solicitation [~~in this state~~] of contributions for a charitable organization[, ~~whether or not at any time the person has custody of contributions from a solicitation~~] or any other person;

(ii) does not solicit contributions; [~~and~~]

(iii) does not at any time have custody of a contribution from solicitation; and

[(iii)] (iv) does not employ, procure, or engage any compensated person to solicit or receive contributions.

(b) "Professional fund raising counsel or consultant" does not include:

(i) a bona fide officer, director, volunteer, or full-time employee of a charitable organization;

(ii) an attorney, investment counselor, or banker who, in the conduct of that person's profession, advises a client [when actually engaged in the giving of] regarding legal, investment, or financial advice[-]; or

(iii) a person who tangentially prepares materials, including a person who:

(A) makes copies;

(B) cuts or folds flyers; or

(C) creates a graphic design or other artwork without providing strategic or campaign-related input.

(14) (a) "Vending device" means a container used by a charitable organization or professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or

donation whether or not the device offers a product or item in return for the contribution or donation.

(b) "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other container.

(15) "Vending device decal" means any decal, tag, or similar designation material that is attached to a vending device, whether or not used or placed by a charitable organization or professional fund raiser, that would indicate that all or a portion of the proceeds from the purchase of items from the vending device will go to a specific charitable organization.

Section 2. Section 13-22-5 is amended to read:

13-22-5. Registration or permit required.

(1) (a) ~~[It is unlawful for any]~~ An organization ~~[to]~~ may not engage in an activity described in Subsection (1)(b) unless the organization is:

(i) exempt under Section 13-22-8; or

(ii) registered with the division in accordance with this chapter.

(b) Unless an organization meets the requirements of Subsection (1)(a), the organization may not knowingly solicit, ~~[request,]~~ promote, ~~[advertise,]~~ or sponsor a charitable solicitation if the charitable solicitation:

(i) originates in Utah;

(ii) is received in Utah; or

(iii) is caused to be made through business operations in Utah.

(2) Subsection (1) does not prohibit an organization from receiving an unsolicited contribution.

~~[(3) It is unlawful for any professional fund raiser to knowingly solicit, request, promote, advertise, or sponsor the solicitation in this state of any contribution for a charitable organization, whether or not the charitable organization is exempt under Section 13-22-8; unless the professional fund raiser and any nonexempt charitable organization that is benefitted are registered with the division.]~~

~~[(4) It is unlawful for any professional fund raising counsel or consultant to knowingly plan, manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this state of a contribution for a charitable organization, whether or not the charitable organization is exempt under Section 13-22-8, unless the professional fund raising~~

counsel or consultant and any nonexempt charitable organization that is benefitted are registered with the division.]

(3) (a) Unless a person acting as a professional fund raiser obtains a permit in accordance with Section 13-22-9, the person may not:

(i) make or facilitate a solicitation either directed toward the state or originating from the state; or

(ii) maintain a place of business in the state or employ an individual located in the state.

(b) Subsection 3(a) applies regardless of whether a charitable organization receiving the services of a professional fund raiser is required to register under this chapter.

(4) (a) Unless a person acting as a professional fund raising counsel or consultant obtains a permit in accordance with Section 13-22-9, the person may not:

(i) maintain a place of business in the state or employ an individual located in the state; or

(ii) provide any service of a professional fund raising counsel or consultant to or for a charitable organization, or any other person, over which the state has general jurisdiction.

(b) Subsection (4)(a) applies regardless of whether a charitable organization receiving the services of a professional fund raising counsel or consultant is required to register under this chapter.

(5) A person required to obtain a permit under Subsection (3) or (4) may not provide any service to or on behalf of an organization required to register under Subsection (1) if the organization is not registered in accordance with Section 13-22-6.

Section 3. Section 13-22-8 is amended to read:

13-22-8. Exemptions.

(1) Section 13-22-5 does not apply to:

(a) a bona fide religious, ecclesiastical, or denominational organization if:

(i) the solicitation is made for a church, missionary, religious, or humanitarian purpose; and

(ii) the organization is either:

(A) a lawfully organized corporation, institution, society, church, or established physical place of worship, at which nonprofit religious services and activities are regularly

214 conducted and carried on;

215 (B) a bona fide religious group:

216 (I) that does not maintain specific places of worship;

217 (II) that is not subject to federal income tax; and

218 (III) that is not required to file an IRS Form 990 under any circumstance; or

219 (C) a separate group or corporation that is an integral part of an institution that is an
220 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported
221 by funds solicited outside the group's or corporation's own membership or congregation;

222 (b) a solicitation by a broadcast media owned or operated by an educational institution
223 or governmental entity, or any entity organized solely for the support of that broadcast media;

224 ~~[(c) except as provided in Subsection 13-22-21(1), a solicitation for the relief of any~~
225 ~~person sustaining a life-threatening illness or injury specified by name at the time of~~
226 ~~solicitation if the entire amount collected without any deduction is turned over to the named~~
227 ~~person;]~~

228 (c) subject to Subsection 13-22-21(1), an individual soliciting a contribution for the
229 relief or benefit of another individual, who is specified by name at the time of the solicitation,
230 if:

231 (i) all contributions are turned over to the named beneficiary after deducting actual
232 expenses necessary for the cost of solicitation, if any; and

233 (ii) all individuals that carry out any fund-raising function for the benefit of the named
234 individual are unpaid, directly or indirectly, for services rendered;

235 (d) a political party authorized to transact the political party's affairs within this state
236 and any candidate and campaign worker of the political party if the content and manner of any
237 solicitation make clear that the solicitation is for the benefit of the political party or candidate;

238 (e) a political action committee or group soliciting funds relating to issues or
239 candidates on the ballot if the committee or group is required to file financial information with
240 a federal or state election commission;

241 (f) (i) a public school;

242 (ii) a public institution of higher learning;

243 (iii) a school accredited by an accreditation body recognized within the state or the
244 United States;

- 245 (iv) an institution of higher learning accredited by an accreditation body recognized
246 within the state or the United States;
- 247 (v) an organization within, and authorized by, an entity described in Subsections
248 (1)(f)(i) through (iv); or
- 249 (vi) a parent organization, teacher organization, or student organization authorized by
250 an entity described in Subsection (1)(f)(i) or (iii) if:
- 251 (A) the parent organization, teacher organization, or student organization is a branch
252 of, or is affiliated with, a central organization;
- 253 (B) the parent organization, teacher organization, or student organization is subject to
254 the central organization's general control and supervision;
- 255 (C) the central organization holds a United States Internal Revenue Service group tax
256 exemption that covers the parent organization, teacher organization, or student organization;
257 and
- 258 (D) the central organization is registered with the division under this chapter;
- 259 (g) a public or higher education foundation established under Title 53A, State System
260 of Public Education, or Title 53B, State System of Higher Education;
- 261 (h) a television station, radio station, or newspaper of general circulation that donates
262 air time or print space for no consideration as part of a cooperative solicitation effort on behalf
263 of a charitable organization, whether or not that organization is required to register under this
264 chapter;
- 265 (i) a volunteer fire department, rescue squad, or local civil defense organization whose
266 financial oversight is under the control of a local governmental entity;
- 267 (j) any governmental unit of any state or the United States;
- 268 (k) any corporation:
- 269 (i) established by an act of the United States Congress; and
270 (ii) that is required by federal law to submit an annual report:
- 271 (A) on the activities of the corporation, including an itemized report of all receipts and
272 expenditures of the corporation; and
- 273 (B) to the United States Secretary of Defense to be:
- 274 (I) audited; and
275 (II) submitted to the United States Congress;

(l) a solicitation by an applicant for a grant offered by a state agency if:

(i) the terms of the grant provide that the state agency monitors a grant recipient to ensure that grant funds are used in accordance with the grant's purpose; and

(ii) the sum of the amount available to the applicant under grants offered by a state agency that the applicant applies for in a calendar year is less than or equal to \$1,500; ~~and~~

(m) a chapter of a charitable organization or a person who solicits contributions for a charitable organization, if the charitable organization is registered with the division pursuant to Section 13-22-5 or is exempt from registration under this section, and:

(i) all contributions solicited by the chapter or person are delivered directly to the control of the charitable organization; or

(ii) (A) the charitable organization holds a United States Internal Revenue Service group tax exemption that covers the chapter;

(B) the charitable organization provides a list of its chapters to the division with its registration or renewal of registration;

(C) the chapter is on the list provided under Subsection (1)(m)(ii)(B);

(D) the chapter maintains the information required under Section 13-22-15 and provides the information to the division upon request; and

(E) solicitations by the chapter or the person are limited to the collection of membership-related fees, dues, or assessments from new and existing members[-];

(n) a solicitation in an obituary; or

(o) a solicitation made exclusively to a family member of the individual making the solicitation.

(2) An organization claiming an exemption under this section bears the burden of proving the organization's eligibility for, or the applicability of, the exemption claimed.

(3) An organization exempt from registration pursuant to this section that makes a material change in the organization's legal status, officers, address, or similar changes shall file a report informing the division of the organization's current legal status, business address, business phone, officers, and primary contact person within 30 days of the change.

(4) The division may by rule:

(a) require an organization that is exempt from registration under this section to:

(i) file a notice of claim of exemption; and

(ii) file a renewal of a notice of claim of exemption;

(b) prescribe the contents of a notice of claim of exemption and a renewal of a notice of claim of exemption; and

(c) require a filing fee for a notice of claim of exemption and a renewal of a notice of claim of exemption as determined under Section 63J-1-504.

Section 4. Section 13-22-9 is amended to read:

13-22-9. Professional fund raiser's or fund raising counsel's or consultant's permit.

~~[(1) It is unlawful for any person or entity to act as a professional fund raiser or professional fund raising counsel or consultant, whether or not representing an organization exempt from registration under Section 13-22-8, without first obtaining a permit from the division by complying with all of the following application requirements:]~~

(1) A person applying for or renewing a permit as a professional fund raiser or a professional fund raising counsel or consultant shall:

(a) pay an application fee as determined under Section 63J-1-504; and

(b) submit a written application, verified under oath, on a form approved by the division that includes:

(i) the applicant's name, address, telephone number, facsimile number, if any;

(ii) the name and address of any organization or person controlled by, controlling, or affiliated with the applicant;

(iii) the applicant's business, occupation, or employment for the three-year period immediately preceding the date of the application;

(iv) whether it is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity;

(v) the names and residence addresses of any officer or director of the applicant;

(vi) the name and address of the registered agent for service of process and a consent to service of process;

(vii) if a professional fund raiser:

(A) the purpose of the solicitation and use of the contributions to be solicited;

(B) the method by which the solicitation will be conducted and the projected length of time it is to be conducted;

(C) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of what percentage of the contributions collected as a result of the solicitation are projected to remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of the flat fee; and

(E) a statement of total contributions collected or received by the professional fund raiser within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the contributions;

(viii) if a professional fund raising counsel or consultant:

(A) the purpose of the plan, management, advice, counsel or preparation of materials for, or with respect to, the solicitation and use of the contributions solicited;

(B) the method by which the plan, management, advice, counsel, or preparation of materials for, or with respect to, the solicitation will be organized or coordinated and the projected length of time of the solicitation;

(C) the anticipated expenses of the plan, management, advice, counsel, or preparation of materials for, or with respect to, the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of total fees to be earned or received from the charitable organization declared in the application, and what percentage of the contributions collected as a result of the plan, management, advice, counsel, or preparation of materials for, or with respect to, the solicitation are projected after deducting the total fees to be earned or received remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of such flat fee; and

(E) a statement of total net fees earned or received within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use of the net earned or received fees in the planning, management, advising, counseling, or preparation of materials for, or with respect to, the solicitation and use of the

contributions solicited for the charitable organization;

(ix) disclosure of any injunction, judgment, or administrative order against the applicant or the applicant's conviction of any crime involving moral turpitude;

(x) a copy of any written agreements with any charitable organization;

(xi) the disclosure of any injunction, judgment, or administrative order or conviction of any crime involving moral turpitude with respect to any officer, director, manager, operator, or principal of the applicant;

(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds;

(xiii) an acknowledgment that fund raising in the state will not commence until both the professional fund raiser or professional fund raising counsel or consultant and the charity, and its parent foundation, if any, are registered and in compliance with this chapter; and

(xiv) any additional information the division may require by rule.

(2) If any information contained in the application for a permit becomes incorrect or incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required by the division.

(3) In addition to the permit fee, an applicant failing to file a permit application or renewal by the due date or filing an incomplete permit application or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the permit application or renewal were due to be filed.

Section 5. Section **13-22-21** is amended to read:

13-22-21. Appeal on behalf of individual.

(1) If a charitable campaign consisting of exempt solicitations for the relief or benefit of a named individual [~~sustaining a life-threatening illness or injury~~], as described in Subsection **13-22-8**(1)(c), collects proceeds in excess of \$1,000, the organizer of the campaign shall give the division written notice of the following:

(a) the organizer's name and address;

(b) the name[;] and whereabouts[~~, and present condition~~] of the person for whose relief or benefit the contributions are solicited [~~including a letter from the person's attending physician detailing the illness or injury~~];

400 (c) the date the charitable campaign commenced; and

401 (d) the purpose to which the collected contributions are to be applied.

402 (2) Notice under Subsection (1) is due within 10 days after commencing the appeal or
403 collecting in excess of \$1,000, whichever is later.

404 (3) If the organizer fails to file timely notice, the division shall inform the organizer of
405 the notice requirement and give the organizer 10 additional days as a grace period within which
406 to file the notice. If the organizer fails to file the notice within the grace period, the division
407 may issue a cease and desist order against the organizer.

408 (4) If, at any time, the division has reasonable cause to believe that the organizer is
409 perpetrating a fraud against the public, or in any other way intends to profit from harming the
410 public through the charitable campaign, it shall issue a cease and desist order against the
411 organizer.

412 Section 6. **Effective date.**

413 If approved by two-thirds of all the members elected to each house, this bill takes effect
414 upon approval by the governor, or the day following the constitutional time limit of Utah
415 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
416 the date of veto override.

Legislative Review Note
Office of Legislative Research and General Counsel